



General Assembly

January Session, 2013

## ***Substitute Bill No. 955***



### ***AN ACT CONCERNING PHARMACY AUDITS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2013*) (a) As used in this  
2       section:

3       (1) "Extrapolation" means the practice of inferring a frequency of  
4       dollar amount of overpayments, underpayments, nonvalid claims or  
5       other errors on any portion of claims submitted, based on the  
6       frequency or dollar amount of overpayments, underpayments,  
7       nonvalid claims or other errors actually measured in a sample of  
8       claims;

9       (2) "Pharmacy audit" means an audit, conducted on-site or remotely  
10      by or on behalf of a pharmacy benefits manager or plan sponsor of any  
11      records of a pharmacy for prescription drugs or prescription devices  
12      dispensed by such pharmacy to beneficiaries of a health benefit plan.  
13      "Pharmacy audit" does not include (A) a concurrent review or desk  
14      audit that occurs within three business days of the pharmacy's  
15      transmission of a claim to a pharmacy benefits manager or plan  
16      sponsor, or (B) a concurrent review or desk audit where no charge-  
17      back or recoupment is demanded by the pharmacy benefits manager  
18      or plan sponsor;

19      (3) "Plan sponsor" has the same meaning as described in section 38a-  
20      479aaa of the general statutes, as amended by this act.

21 (b) (1) No entity other than a pharmacy benefits manager or a plan  
22 sponsor shall conduct a pharmacy audit unless such entity and  
23 manager or sponsor, as applicable, have executed a written agreement  
24 for the conducting of pharmacy audits. Prior to conducting a  
25 pharmacy audit on behalf of such manager or sponsor, such entity  
26 shall notify the pharmacy in writing that such entity and manager or  
27 sponsor, as applicable, have executed such agreement.

28 (2) Any entity conducting a pharmacy audit shall have access only  
29 to previous pharmacy audit reports of a particular pharmacy  
30 conducted by or on behalf of such entity. Nothing in this subdivision  
31 shall be construed to authorize access to any information that is  
32 confidential or prohibited from disclosure by law.

33 (3) Any information collected during a pharmacy audit shall be  
34 confidential by law, except that the entity conducting the pharmacy  
35 audit may share such information with the pharmacy benefits manager  
36 and the plan sponsor, for which such pharmacy audit is being  
37 conducted.

38 (4) No entity conducting a pharmacy audit shall receive payment or  
39 any other consideration on any basis that is based on the amount  
40 claimed or the actual amount recouped from the pharmacy being  
41 audited.

42 (c) (1) Any entity conducting a pharmacy audit shall:

43 (A) Provide the pharmacy being audited at least fourteen calendar  
44 days' prior written notice before conducting a pharmacy audit;

45 (B) Not initiate or schedule a pharmacy audit during the first five  
46 business days of any month, unless expressly agreed to by the  
47 pharmacy being audited;

48 (C) Make all determinations regarding the validity of a prescription  
49 or other record consistent with sections 20-612 to 20-623, inclusive, of  
50 the general statutes;

51 (D) Accept paper or electronic signature logs that document the  
52 delivery of prescription drug and device and pharmacist services to a  
53 health plan beneficiary or such beneficiary's agent;

54 (E) Provide to the pharmacist in charge, prior to leaving the  
55 pharmacy at the conclusion of an on-site portion of a pharmacy audit,  
56 a complete list of records reviewed; and

57 (F) Establish a process for a pharmacy to appeal a final pharmacy  
58 audit report and disclose such procedures to the pharmacy being  
59 audited.

60 (2) Any pharmacy audit that involves clinical judgment shall be  
61 conducted by or in consultation with a licensed pharmacist.

62 (3) No pharmacy audit shall cover a period of more than twenty-  
63 four months after the date a claim was submitted by the pharmacy to  
64 the pharmacy benefits manager or plan sponsor unless a longer period  
65 is required by law.

66 (d) (1) (A) Not later than sixty calendar days after an entity  
67 concludes a pharmacy audit and before such entity issues a final  
68 pharmacy audit report, such entity shall provide a preliminary  
69 pharmacy audit report to the pharmacy. Such entity shall provide such  
70 pharmacy with not less than thirty calendar days after such pharmacy  
71 receives such preliminary report to respond to the findings in such  
72 report, including addressing any alleged mistakes or discrepancies and  
73 producing documentation to that effect.

74 (B) To validate the pharmacy record and delivery, a pharmacy may  
75 use authentic and verifiable statements or records, including, but not  
76 limited to, medication administration records of a nursing home,  
77 assisted living facility, hospital or health care provider with  
78 prescriptive authority.

79 (C) To validate claims in connection with prescriptions or changes  
80 in prescriptions, or refills of prescription drugs, a pharmacy may use

81 any valid prescription, including, but not limited to, medication  
82 administration records, facsimiles, electronic prescriptions,  
83 electronically-stored images of prescriptions, electronically-created  
84 annotations or documented telephone calls from the prescribing health  
85 care provider or such provider's agent. Documentation of an oral  
86 prescription order that has been verified by the prescribing health care  
87 provider shall meet the provisions of this subparagraph.

88 (D) If an entity conducting a pharmacy audit uses extrapolation to  
89 calculate penalties or amounts to be charged back or recouped, the  
90 pharmacy may present evidence to validate orders for prescription  
91 drugs or prescription devices that are subject to invalidation due to  
92 extrapolation.

93 (2) (A) Not later than one hundred twenty calendar days after any  
94 responses from the pharmacy under subdivision (1) of this subsection  
95 are received by the entity conducting the pharmacy audit or, if no such  
96 responses are received, after the entity concludes a pharmacy audit,  
97 such entity shall issue a final pharmacy audit report that takes into  
98 consideration any responses provided to such entity by the pharmacy.

99 (B) A pharmacy may appeal a final pharmacy audit report in  
100 accordance with the procedures established by the entity conducting  
101 the pharmacy audit, provided the time period for filing such appeal is  
102 not less than thirty calendar days after such pharmacy receives such  
103 final report.

104 (C) After an appeal under subparagraph (B) of this subdivision has  
105 been decided, the entity that issued the final pharmacy audit report  
106 shall provide a written determination of the appeal together with the  
107 final pharmacy audit report to the pharmacy and, if applicable, the  
108 pharmacy benefits manager and the plan sponsor. If the pharmacy,  
109 pharmacy benefits manager or plan sponsor is not satisfied with such  
110 determination, such pharmacy, manager or sponsor may seek relief  
111 pursuant to the terms of the contract between such pharmacy and such  
112 manager or sponsor.

113 (e) (1) No pharmacy shall be subject to charge-back or recoupment  
114 for a clerical or recordkeeping error in a required document or record,  
115 including a typographical error, scrivener's error or computer error,  
116 unless such error resulted in actual financial harm to the pharmacy  
117 benefits manager, plan sponsor or a plan beneficiary.

118 (2) No entity conducting a pharmacy audit or person acting on  
119 behalf of such entity shall charge-back or recoup, attempt to charge-  
120 back or recoup, or assess or collect penalties from a pharmacy until the  
121 time period to file an appeal of a final pharmacy audit report has  
122 passed or the appeals process has been exhausted, whichever is later. If  
123 an identified discrepancy in a pharmacy audit exceeds thirty thousand  
124 dollars, future payments to the pharmacy in excess of such amount  
125 may be withheld pending adjudication of an appeal. No interest shall  
126 accrue for any party during the audit period, beginning with the notice  
127 of the pharmacy audit and ending with the conclusion of the appeals  
128 process.

129 (f) The provisions of this section shall not apply to a pharmacy audit  
130 conducted because a pharmacy benefits manager, a plan sponsor, an  
131 entity acting on behalf of such manager or sponsor or an employer  
132 covered under a health benefit plan has indications that support a  
133 reasonable suspicion that the pharmacy being audited is or has been  
134 engaged in criminal wrongdoing, wilful misrepresentation or fraud.

135 Sec. 2. Section 38a-479aaa of the general statutes is repealed and the  
136 following is substituted in lieu thereof (*Effective October 1, 2013*):

137 As used in this section and sections 38a-479bbb to 38a-479hhh,  
138 inclusive, as amended by this act, and section 1 of this act:

139 (1) "Commissioner" means the Insurance Commissioner;

140 (2) "Department" means the Insurance Department;

141 (3) "Drug" means drug, as defined in section 21a-92;

142 (4) "Person" means person, as defined in section 38a-1;

143 (5) "Pharmacist services" includes (A) drug therapy and other  
144 patient care services provided by a licensed pharmacist intended to  
145 achieve outcomes related to the cure or prevention of a disease,  
146 elimination or reduction of a patient's symptoms, and (B) education or  
147 intervention by a licensed pharmacist intended to arrest or slow a  
148 disease process;

149 (6) "Pharmacist" means an individual licensed to practice pharmacy  
150 under section 20-590, 20-591, 20-592 or 20-593, and who is thereby  
151 recognized as a health care provider by the state of Connecticut;

152 (7) "Pharmacy" means a place of business where drugs may be sold  
153 at retail and for which a pharmacy license has been issued to an  
154 applicant pursuant to section 20-594; and

155 (8) "Pharmacy benefits manager" or "manager" means any person  
156 that administers the prescription drug, prescription device, pharmacist  
157 services or prescription drug and device and pharmacist services  
158 portion of a health benefit plan on behalf of plan sponsors such as self-  
159 insured employers, insurance companies, labor unions and health care  
160 centers.

161 Sec. 3. Section 38a-479bbb of the general statutes is repealed and the  
162 following is substituted in lieu thereof (*Effective October 1, 2013*):

163 (a) Except as provided in subsection (d) of this section, no person  
164 shall act as a pharmacy benefits manager in this state without first  
165 obtaining a certificate of registration from the commissioner.

166 (b) Any person seeking a certificate of registration shall apply to the  
167 commissioner, in writing, on a form provided by the commissioner.  
168 The application form shall state (1) the name, address, official position  
169 and professional qualifications of each individual responsible for the  
170 conduct of the affairs of the pharmacy benefits manager, including all  
171 members of the board of directors, board of trustees, executive

172 committee, other governing board or committee, the principal officers  
173 in the case of a corporation, the partners or members in the case of a  
174 partnership or association and any other person who exercises control  
175 or influence over the affairs of the pharmacy benefits manager, and (2)  
176 the name and address of the applicant's agent for service of process in  
177 this state.

178 (c) Each application for a certificate of registration shall be  
179 accompanied by (1) a nonrefundable fee of fifty dollars, and (2)  
180 evidence of a surety bond in an amount equivalent to ten per cent of  
181 one month of claims in this state over a twelve-month average, except  
182 that such bond shall not be less than twenty-five thousand dollars or  
183 more than one million dollars.

184 (d) Any pharmacy benefits manager operating as a line of business  
185 or affiliate of a health insurer, health care center, hospital service  
186 corporation, medical service corporation or fraternal benefit society  
187 licensed in this state or any affiliate of such health insurer, health care  
188 center, hospital service corporation, medical service corporation or  
189 fraternal benefit society shall not be required to obtain a certificate of  
190 registration. Such health insurer, health care center, hospital service  
191 corporation, medical service corporation or fraternal benefit society  
192 shall notify the commissioner annually, in writing, on a form provided  
193 by the commissioner, that it is affiliated with or operating a business as  
194 a pharmacy benefits manager.

195 [(e) Any person acting as a pharmacy benefits manager on January  
196 1, 2008, and required to obtain a certificate of registration under  
197 subsection (a) of this section, shall obtain a certificate of registration  
198 from the commissioner not later than April 1, 2008, in order to  
199 continue to do business in this state.]

200 Sec. 4. Section 38a-479eee of the general statutes is repealed and the  
201 following is substituted in lieu thereof (*Effective October 1, 2013*):

202 The commissioner may conduct investigations and hold hearings on

203 any matter under the provisions of sections 38a-479aaa to 38a-479hhh,  
204 inclusive, as amended by this act, and section 1 of this act. The  
205 commissioner may issue subpoenas, administer oaths, compel  
206 testimony and order the production of books, records and documents.  
207 If any person refuses to appear, to testify or to produce any book,  
208 record, paper or document when so ordered, upon application of the  
209 commissioner, a judge of the Superior Court may make such order as  
210 may be appropriate to aid in the enforcement of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	New section
Sec. 2	October 1, 2013	38a-479aaa
Sec. 3	October 1, 2013	38a-479bbb
Sec. 4	October 1, 2013	38a-479eee

Section 1	October 1, 2013	New section
Sec. 2	October 1, 2013	38a-479aaa
Sec. 3	October 1, 2013	38a-479bbb
Sec. 4	October 1, 2013	38a-479eee

***Statement of Legislative Commissioners:***

Throughout section 1, "pharmacy benefit manager" was changed to "pharmacy benefits manager" for statutory consistency.

***INS***        *Joint Favorable Subst. -LCO*